

ARIZONA DEPARTMENT OF PUBLIC SAFETY
INTEROFFICE MEMORANDUM



FRANK L. MILSTEAD
DIRECTOR

DATE: May 23, 2017

TO: Colonel Frank L. Milstead, Director

FROM: Major Jack R. Johnson, Critical Incident Review Chairman **R#5367**

SUBJECT: CRITICAL INCIDENT #AZ1700001188

FOR: ☐ Action ☐ Decision ☒ Information ☐ Signature

On May 17, 2017, I was appointed by Director Frank Milstead to serve as the chairperson and given the responsibility of conducting a Critical Incident Review of DPS Critical Incident #AZ1700001188, which occurred on January 24, 2017, and is briefly described in the following synopsis:

On Tuesday, January 24, 2017, at approximately 1225 hours, the Arizona Department Public Safety (DPS) Deputy Director, Lieutenant Colonel Heston Silbert, #10000, was off-duty and driving his personal vehicle when he witnessed a vehicle being stolen near the intersection of Guadalupe Road and Cooper Road in Gilbert, Arizona. A Gilbert Police Department (GPD) Officer was working near the intersection and directed Silbert to follow the stolen vehicle. Silbert followed and called 911, at which time he began giving location updates to a GPD Dispatcher. The suspect was later identified as Bradley Moore of Florence, Arizona.

The GPD responded to Lieutenant Colonel Silbert's location and initiated a pursuit on northbound State Route 101 near Shea Boulevard in Scottsdale, Arizona. The GPD terminated their pursuit shortly after it was initiated; however, Lieutenant Colonel Silbert continued to follow the suspect vehicle. Numerous DPS and GPD sworn personnel responded and assisted in a DPS initiated pursuit of the suspect vehicle on I-17. DPS units successfully deployed tire deflation devices (Stop Sticks); however, Moore refused to stop. On northbound Interstate 17, at approximately mile post 281.2, outside of Camp Verde, Arizona, the suspect vehicle left the roadway and rolled down a hillside. Moore was ejected from the vehicle and was pronounced deceased at the scene.

Critical Incident Review Board

In review of the critical incident, I have determined the events that occurred on January 24, 2017, do not exceed my training, experience and understanding of any specialized or technical expertise required to complete a thorough review and provide a competent recommendation to the Director on training, policy, procedural, or equipment deficiencies that may have been contributing factors to the incident. Therefore, I have determined this incident does not warrant the attention of a full Critical Incident Review Board (CIRB) committee and have made the decision not to convene one.

Review

I received the investigative file for this incident on May 17, 2017, at approximately 1700 hours, from Major Ray Butler at the DPS Headquarters in Phoenix. I began my review of this critical incident on the morning of May 18, 2017, and completed my review and documentation of my findings and recommendations in this report on May 23, 2017. During my review, I made findings based on the reasonableness of actions, rather than the correctness of outcome by Department employees, as prescribed by the DPS Critical Incident Manual review guidelines. I considered department directives and law, and determined whether policy, procedure, training, or equipment deficiencies were apparent. I also considered the following factors as prescribed by the DPS Critical Incident Manual review guidelines:

1. Degree of perceived hazard
2. Degree of employee control
3. Time frame
4. Type of opponent
5. Assignment
6. Presence of other employees and citizens
7. Available equipment
8. Applicable policies and procedures
9. Employees training background

Involved Department Employees

- 1) Name: Lieutenant Colonel Heston Silbert, #10000
Assignment: Deputy Director
Involvement: Reported witnessing a suspect steal a truck near the intersection of Guadalupe Road and Cooper Road. Stated he was requested by the GPD to follow the stolen vehicle
- 2) Name: Sergeant Brandon Powell, #5440
Assignment: Special Operations Unit (SOU), Criminal Investigations Division
Involvement: Primary Unit in pursuit
- 3) Name: Trooper Kendal Hill, #4807
Assignment: Metro Gang Immigration Intelligence Team Enforcement Mission (GIITEM) West, K9, Criminal Investigations Division
Involvement: Secondary Unit in pursuit
- 4) Name: Sergeant Daniel Felan, #6603
Assignment: Metro Central, Highway Patrol Division
Involvement: Assisted with incident

- 5) Name: Captain Stephen Harrison, #5080
Assignment: Metro East, Highway Patrol Division
Involvement: Assisted with incident
- 6) Name: Trooper Wesley Watson, #7755
Assignment: District 12, Highway Patrol Division
Involvement: Assisted with incident, deployed Stop Sticks
- 7) Name: Trooper Timothy Williams, #7717
Assignment: District 12, Highway Patrol Division
Involvement: Assisted with incident, deployed Stop Sticks
- 8) Name: Sergeant John McFarland, #4493
Assignment: District 12, Highway Patrol Division
Involvement: Assisted with incident, deployed Stop Sticks
- 9) Name: Trooper Joseph (Tyler) Ramsey, #7098
Assignment: Metro East, Motors Highway Patrol Division
Involvement: Was the first DPS unit behind Silbert
- 10) Name: Trooper Keith Gephardt, #7249
Assignment: Metro East, Highway Patrol Division
Involvement: Assisted in the incident, first DPS pursuit-rated vehicle behind Silbert
- 11) Name: Major Deston Coleman, #4582
Assignment: Bureau Commander, Metro Patrol, Highway Patrol Division
Involvement: Provided direction to Harrison
- 12) Name: Lieutenant Colonel Daniel Lugo, #4190
Assignment: Assistant Director, Highway Patrol Division
Involvement: Provided direction to Philpot
- 13) Name: Major John Philpot, #4808
Assignment: Bureau Commander, Northern Patrol, Highway Patrol Division
Involvement: Monitored incident after entering District 12
- 14) Name: Tempe Police Department Officer Albert Ramos, #80264
Assignment: Central, GITEM, Criminal Investigations Division
Involvement: Responded and assisted with incident
- 15) Name: Police Communications Dispatcher Hilda Teahan, #5726
Assignment: Operational Communications, Central Communications, Technical Services Division

Involvement: Incident dispatcher, Criminal Investigations and Interoperability (INOP) channel

- 16) Name: Police Communications Dispatcher Sandra Platt, #7398
Assignment: Operational Communications, Central Communications, Technical Services Division
Involvement: Incident dispatcher, Metro East
- 17) Name: Police Communications Dispatcher Lisa Tarr, #5652
Assignment: Operational Communications, Central Communications, Technical Services Division
Involvement: Incident dispatcher, Metro South
- 18) Name: Police Communications Supervisor Cynthia Hudson, #6476
Assignment: Operational Communications, Central Communications, Technical Services Division
Involvement: Dispatch supervisor, monitored incident
- 19) Name: Police Communications Dispatcher Jennifer Grzybowski, #5578
Assignment: Operational Communications, Central Communications, Technical Services Division
Involvement: Incident dispatcher, Metro Central
- 20) Name: Police Communications Dispatcher Debra Fajardo, #7198
Assignment: Operational Communications, Central Communications, Technical Services Division
Involvement: Incident dispatcher, Metro West
- 21) Name: Police Communications Dispatcher Nola Cardani, #4123
Assignment: Operational Communications, Flagstaff Communications, Technical Services Division
Involvement: Incident dispatcher, District 12
- 22) Name: Police Communications Dispatcher Amelia MacMurtrie, #10288
Assignment: Operational Communications, Flagstaff Communications, Technical Services Division
Involvement: Incident dispatcher, District 12
- 23) Name: Trooper Mace Craft, #6010
Assignment: Commercial Vehicle Enforcement, North
Involvement: Assisted with incident, deployed Stop Sticks

Note: Trooper Mace Craft was not included in the investigative report as a directly involved employee, however, in review of this critical incident I learned via the District

12 Operational Communications console audio recording that Call Sign 1515 was involved and appeared to be the second officer to deploy tire deflation devices. I identified Call Sign 1515 as Trooper Mace Craft. In review of the CAD log, it confirmed that Trooper Craft was assigned to the incident. I also confirmed his involvement during a brief phone conversation with him. Trooper Craft described his involvement to me, which was attempting to deploy Stop Sticks at milepost 244 on I-17. The suspect vehicle swerved and avoided striking them. Trooper Craft wrote and submitted a supplemental report which I located in the investigative file. Trooper Craft advised me he was not interviewed. Due to his actions of attempting to deploy pursuit intervention tactics during the incident, I consider him to be a directly involved employee and have included him as such in this review.

Situation

The following is my synopsis of the situation. A more detailed account of the totality of the incident is documented in the investigative report and supporting documentation within the investigative file.

On Tuesday, January 24, 2017, at approximately 1225 hours, the Arizona Department Public Safety (DPS) Deputy Director, Lieutenant Colonel Heston Silbert, #10000, was off-duty and driving his personal vehicle when he witnessed a White Chevrolet work truck being stolen near the intersection of Guadalupe Road and Cooper Road in Gilbert, Arizona. A Gilbert Police Department (GPD) Officer, Officer Jonathan Rogers, was working near the intersection and responded to the scene of the theft. Lieutenant Colonel Silbert drove to the scene and immediately contacted Officer Rogers. After advising Officer Rogers of the fact he was an off-duty officer, Lieutenant Colonel Silbert inquired if Officer Rogers wanted him to follow the suspect vehicle. Officer Rogers directed him to do so.

Lieutenant Colonel Silbert proceeded to follow the suspect vehicle, called 911 and began communicating with GPD Dispatch Call-Taker, Mr. Spencer Jaekel. Lieutenant Colonel Silbert identified himself by name and rank, advised he was off-duty, had no police identification, was armed, driving his personal vehicle, a black GMC 4x4, advised there were two occupants in the suspect vehicle, recommended GPD solicit aircraft support, requested a DPS traffic break, requested GPD communicate to DPS that it is "DPS 2" behind the vehicle, requested information about the suspect's criminal acts, specifically robbery, and provided specific suspect vehicle description, location updates and suspect driving behavior to Mr. Jaekel. Mr. Jaekel advised Lieutenant Colonel Silbert that their detective, "has what you saw, you witnessed a carjacking."

GPD Officer Jason Biggs, responded to the mobile location of Lieutenant Colonel Silbert and suspect Moore as he drove the stolen vehicle north on Loop 101. Officer Biggs initiated a pursuit of the suspect but terminated it shortly thereafter following the direction of GPD command. With approval of GPD command, GPD Officer Biggs continued to follow Lieutenant Colonel Silbert and the suspect on Loop 101 until the suspect exited at 56th Street. Shortly after the

suspect exited 56th Street, GPD Call-taker Jaekel advised Lieutenant Colonel Silbert that Phoenix Firebird had visual of the vehicle.

Lieutenant Colonel Silbert was unable to follow the suspect safely when he exited Loop 101 at 56th Street, however, he observed GPD Officer Biggs follow the suspect as it exited. Concerned there were no officers present to assist Officer Biggs, Lieutenant Colonel Silbert exited Loop 101 at Tatum Road and traveled north to Deer Valley Road in an attempt to locate the suspect and Officer Biggs to provide support if necessary. Lieutenant Colonel Silbert located the suspect as he traveled west on Deer Valley Road, observed him run the red light at the intersection of Tatum and proceeded to travel south on Tatum. Lieutenant Colonel Silbert also observed Officer Biggs stopped at the red light at the intersection of Tatum. Lieutenant Colonel Silbert made a U-turn and followed the suspect vehicle as it traveled back to and entered the Loop 101 westbound. While traveling westbound on the 101, Lieutenant Colonel Silbert advised GPD Call-taker Jaekel that he saw a DPS motor approaching, however the motor officer fell back and followed at a distance. Jaekel advised that Phoenix Firebird requested units back-off, including Lieutenant Colonel Silbert, which he did. Lieutenant Colonel Silbert also requested an ETA for DPS units.

Lieutenant Colonel Silbert followed the suspect vehicle and observed it exit Loop 101 on to I-17 north bound at which time GPD Call-taker Jaekel advised him DPS SWAT and K9 were in route. GPD call-taker Jaekel advised Lieutenant Colonel Silbert that it was best he stay on the line to provide updates because he was losing radio contact with GPD units. As the suspect passed Jomax Road, Lieutenant Colonel Silbert asked for an ETA of DPS units. From his initial involvement in this incident until this time, the DPS motor (Trooper Ramsey) was the only unit he observed and no other units were visible nor known to him to be engaged in the incident.

Approximately 40 minutes after his initial call to 911, GPD Call-taker Jaekel patched the phone call from Lieutenant Colonel Silbert to DPS Operational Communications Dispatcher Sandra Platt, who advised Lieutenant Colonel Silbert that Phoenix Firebird was requesting all units to back-off and they only wanted unmarked units with them. Lieutenant Colonel Silbert explained he was in an unmarked unit. Dispatcher Platt advised that we (DPS) had tons of marked units behind him, a canine was setting up at Loop 303, and District 12 was setting up at Black Canyon City. Lieutenant Colonel Silbert acknowledged the traffic and questioned if they had it. Dispatcher Platt requested Lieutenant Colonel Silbert continue to provide updates because they weren't getting the information needed; Lieutenant Colonel Silbert agreed and immediately began giving updates, to include location, suspect driving behavior, and his belief there were two occupants in the vehicle.

During the incident one of the suspects believed to be in the vehicle was identified through investigative means as Bradley Moore, an Arizona resident with a DOB of 8/15/1987.

Dispatcher Platt informed Lieutenant Colonel Silbert that the suspect (Moore) was suicidal, they only had information that there was one suspect in the vehicle, and he dumped one stolen vehicle and stole another vehicle from the construction site. After Lieutenant Colonel Silbert advised there were two occupants in the suspect vehicle, Dispatcher Platt stated there may be a victim

and Lieutenant Colonel Silbert asked if there was a hostage and she responded "possibly". Lieutenant Colonel Silbert explained if that was the case, he saw the suspect enter the passenger side of the vehicle when it was stolen, so the suspect may be occupying the passenger side.

Dispatcher Platt advised Lieutenant Colonel Silbert that DPS units were set up with Stop Sticks at milepost 242, 12 miles ahead. Just prior to exit 236, Dispatcher Platt advised Lieutenant Colonel Silbert that Phoenix Firebird would have to discontinue, he acknowledged and advised he had it, referring to the fact he had visual of the suspect vehicle. Shortly after this communication, cell service was lost and communication with Lieutenant Colonel Silbert was discontinued.

The suspect vehicle, Lieutenant Colonel Silbert, and numerous DPS and other agency personnel involved in the incident traveled north on I-17. Other than the original DPS motor that Lieutenant Colonel Silbert observed much earlier during the incident, the first DPS unit he observed following the incident on I-17 was a gold, unmarked Chevrolet Tahoe, driven by DPS SWAT Sergeant Brandon Powell, several miles north of Table Mesa Road.

At milepost 242 on I-17 northbound, DPS Trooper Timothy Williams deployed Stop Sticks (tire deflation device) which were successful in deflating the suspect vehicles left front tire. The suspect continued to travel north as Sergeant Powell provided updates via D12 radio. At milepost 244 northbound on I-17, DPS Trooper Mace Craft deployed Stop Sticks; the suspect swerved around them, made no contact with the device, and the intervention technique was unsuccessful. Just prior to the incident passing milepost 255 northbound, Major John Philpot confirmed via D12 radio that Lieutenant Colonel Silbert was in an unmarked vehicle and requested him to be replaced with a marked unit. DPS Captain Steve Harrison advised they would if they could and eluded there were several unmarked vehicles preventing this, but advised he had several marked units following. At milepost 256 northbound on I-17, DPS Trooper Wesley Watson deployed Stop Sticks; the suspect swerved around them, made no contact with the device, and the intervention technique was unsuccessful, however, Lieutenant Colonel Silbert struck the Stop Sticks rendering his vehicle disabled. Lieutenant Colonel Silbert pulled his vehicle to the side of the roadway, left it and was picked up by DPS Trooper Watson, and remained in the incident. Once Lieutenant Colonel Silbert's vehicle was disabled, Sergeant Powell moved to a position where he was the first vehicle behind the suspect vehicle and continued to provide updates via D12 radio. At milepost 264 on I-17 northbound, DPS Sergeant John McFarland deployed Stop Sticks which were successful in deflating the suspect vehicle's left rear tire.

Just north of the Orme Dugas intersection of I-17, Sergeant Powell advised of inclement weather and requested authorization to deploy a PIT maneuver. Captain Harrison inquired the status of the passenger, whether they were a victim or a suspect, and Lieutenant Colonel Silbert, now communicating on D12 radio, explained it appeared the passenger ran to get in the vehicle so he wasn't sure what was going on (referring to the occupant's suspect/victim status), he then authorized the PIT maneuver if an opportunity presented itself. Lieutenant Colonel Silbert advised when he was communicating with GPD they indicated a car-jacking, which he wanted confirmed as that information elevated the situation.

Near milepost 278, the incident entered what was reported as snow and fog as the suspect vehicle continued to travel northbound on two deflated left tires at speeds reported as 90 MPH. DPS Captain G.R. Manera inquired if there were DPS units to block off exit ramps entering the town of Camp Verde, a tactic to ensure the incident remained on I-17 and out of the town limits. D12 radio reported that Yavapai County Sheriff's Office personnel were blocking all Camp Verde exit ramps.

Just past milepost 282 on I-17, DPS Sergeant Felan reported that the suspect vehicle had crashed and rolled down the mountain. The crash brought the vehicular mobility of the incident to an end approximately 40 miles after the pursuit began and 26 miles after Lieutenant Colonel Silbert stopped following it in his vehicle. Sergeant Felan immediately requested EMS support, a traffic break and for units to "shut it down." The suspect vehicle was originally reported to have traveled approximately 100 feet down the mountain and later reported to have traveled approximately 400 feet down the mountain.

Although it was believed there were possibly two subjects occupying the suspect vehicle for the duration of the incident, an exhaustive search was conducted and a second person could not be located. The driver/suspect and sole occupant of the suspect vehicle, Bradley Moore, was ejected from the vehicle as it traveled uncontrollably down the canyon and was located by Sergeant Felan, seriously injured. Bradley Moore later died as a result of his injuries on scene and was pronounced deceased by medical personnel.

Captain Harrison ordered incident command be established and Captain GR Manera assumed command of the incident. The incident was investigated by the DPS Special Investigations Unit and Vehicular Crimes Unit.

Findings & Recommendations:

Policy/Procedure

DPS General Order 1.2.10; DPS Mission, Values, and Code of Ethics

- I. **Policy**
Employees of the Department of Public Safety shall observe the highest standards of integrity, dedication, and respect for the law in upholding the public trust. In the discharge of their duties and in their personal lives, they shall be guided by the Department's values and the code of ethics expressed in this order.
- II. **Mission Statement**
*The mission of the Arizona Department of Public Safety is:
To protect human life and property by enforcing state laws, deterring criminal activity, and providing vital support to the State of Arizona and its citizens.*
- III. **Vision**
*The vision of the Arizona Department of Public Safety is:
To be the national model in providing customer-oriented state-level law enforcement services.*
- IV. **Motto**
Courteous Vigilance is the Arizona Department of Public Safety's motto and guiding principle, which reflects the pride of the department. We provide quality, reliable, and respectful service to the citizens of Arizona while being vigilant in the enforcement of the laws of the state.
- V. **Values**
The following are our seven core values supporting the tradition of Courteous Vigilance and are reflected in the acronym JUSTICE which represents the seven points of the Department's badge:
 - A. **Justice**
We embrace the qualities of fairness, equality and quickness in protecting the rights of the people we serve.
 - B. **Undaunted commitment**
We demonstrate moral and physical courage, vigilance and diligence in duty performance.

C. Service

We deliver exceptional service assistance through teamwork and cooperation.

D. Trust

We strive to earn and keep the confidence of the people we serve through truthfulness, communication and reliability.

E. Integrity

We are honest, factual and accountable while being an example of excellence on and off duty.

F. Courtesy

We are respectful and polite to everyone.

G. Empathy

We are compassionate and respectful in all that we do.

VI. Code of Ethics

- A. The people of Arizona have conferred upon the Department of Public Safety the authority and responsibility to safeguard lives and property within constitutional parameters. Because of this special trust and confidence, we expect employees of the Department to make the following commitments:*

I will exercise self-restraint and be constantly mindful of the welfare of others. I will be exemplary in obeying the laws of the land and loyal to the state of Arizona, the Department of Public Safety, and the Department's mission, values, and guiding directives. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secure unless revelation is necessary in the performance of my duty.

I will never take selfish advantage of my position and will not allow my personal feelings, animosities, or friendships to influence my actions or decisions. I will exercise the authority of my office to the best of my ability, with courtesy and vigilance, without favor, malice, or ill will, and without compromise.

I am a servant of the people, and I recognize my position as a symbol of public faith. I accept it as a public trust to be held so long as I am true to the law and employed by the people of Arizona.

Findings:

During this incident, DPS employees were involved in a fluid and dynamic, situation to apprehend what was believed to be a dangerous and violent suspect, who had committed numerous felony crimes prior to the incident and while the incident was occurring. Several unusual factors presented challenges to those involved. I find no evidence to suggest that any involved employee acted outside the Department's mission, values, and code of ethics while the incident was transpiring.

In the aftermath of the incident, DPS Detective Kendal Hill, while off-duty, posted information about the incident on his personal Facebook page. Hill posted he was present during the incident. Hill wrote, "He died a felon, but still feel bad for his family." Hill also wrote, "He made it to around 285ish. He lost control there and went over a guardrail and rolled down the hill. He was ejected in the process."

Detective Hill's comments on social media are inconsistent with the Department's Code of Ethics, and are *not reasonable*.

Recommendation:

Detective Hill shall review the Department's Code of Ethics and be ordered to refrain from posting sensitive and/or confidential information via social media in the future.

DPS General Order 4.3.40; 24-hour Peace Officer Authority

I. Policy

While in off-duty status, sworn and reserve troopers may invoke their authority as peace officers and take appropriate action to respond to police-related situations within the scope of their commission.

Lieutenant Colonel Silbert was off-duty, in his personally owned vehicle, when he witnessed suspect Bradley Moore steal a vehicle from a construction site near the intersection of Guadalupe and Cooper in Gilbert, Arizona. Lieutenant Colonel Silbert immediately responded to the scene, advised GPD Officer Rogers he was an off-duty officer, and was subsequently requested by Officer Rogers to follow the stolen vehicle, which he did. Lieutenant Colonel Silbert called 911 with his cell-phone and was telephonically connected with GPD Operational Communications Call-taker, Spencer Jaekel. Lieutenant Colonel Silbert identified himself by name, rank, and the fact he was an off-duty officer and armed. He also reported information about the incident and explained he was following the suspect vehicle at the request of GPD Officer Rogers.

Findings:

Lieutenant Colonel Silbert's actions were consistent with policy and *reasonable*.

Recommendation:

No further action is necessary.

DPS General Order 4.3.10; Carrying of Authorized Weapons and Ammunition

I. Policy

Employees authorized to carry weapons as part of their duties shall only carry approved weapons, ammunition and related equipment while on duty. Sworn employees, security officers, detention transport officers (DTO) and other individuals approved by the Director shall complete required training as specified by Operational Training related to any weapon carried and comply with department safety standards associated with the weapon.

III. Off-Duty Firearms

- A. Sworn employees may, but are not required to, carry a firearm while off duty. When acting in an official capacity, sworn employees are subject to the provisions of GO 4.3.40, 24-Hour Peace Officer Authority, and GO 4.1.10, Use of Force, regarding the use of force. When carrying an authorized firearm, sworn employees shall carry their department identification at all times.*

Lieutenant Colonel Silbert was off-duty and carrying his personally owned, Department approved, secondary handgun and had his department identification credentials in his possession. It shall be noted that Lieutenant Colonel Silbert advised GPD Call-Taker Jaekel that he had no police "identification" on. During his investigative interview, Lieutenant Colonel Silbert explained his comment to GPD about not having police identification on was referring to the fact he was not dressed in a manner that would identify him as a police officer. However, he advised that he had his police "credentials" in his possession.

Finding:

Lieutenant Colonel Silbert's actions were consistent with policy and *reasonable*.

Recommendation:

No further action is necessary.

Note: During the administrative investigation, Lieutenant Colonel Silbert was questioned about his possession of a spare magazine, which he did not possess during the incident. DPS policy does not require off-duty personnel to carry a spare magazine while armed with a DPS approved firearm while in an off-duty capacity.

DPS General Order 1.1.01; Vocabulary for Department Directives

Pursuit: An active attempt by a law enforcement trooper in a police unit to apprehend a suspected law violator in a motor vehicle, when the operator of that motor vehicle is aware of the trooper's presence and is resisting apprehension by maintaining or increasing speed, ignoring the trooper, or attempting to elude the trooper.

Findings:

In review of the incident, it has been determined some of the involved employees perceived the incident to be a "pursuit", and some did not. It was communicated as a "pursuit" by some involved, and documented as a "pursuit" in radio communications and the investigative report.

Per DPS policy, at the onset of the incident, Lieutenant Colonel Silbert was not in pursuit of the vehicle due to the fact he was operating his personally owned vehicle, not a police unit. He was only following it at the request of GPD Officer Rogers, serving as a witness and providing information as the suspect fled from the scene where he committed the theft of the vehicle. GPD Officer Biggs, in a fully marked police unit, attempted to stop the vehicle on the 101 with activated police lights, and when it deliberately failed to stop, initiated a pursuit and terminated it soon thereafter at the request of GPD command.

As the suspect vehicle traveled westbound on the 101 and exited on to I-17 and traveled northbound to milepost 256, where Lieutenant Colonel Silbert's personally owned vehicle struck tire deflation devices and was rendered disabled, Lieutenant Colonel Silbert followed the vehicle at the request of both GPD and DPS operational communications dispatchers to provide relative real-time information pertaining to the suspect's location. Again, per DPS policy, Lieutenant Colonel Silbert was not in pursuit due to the fact he was operating his personally owned vehicle, not a police unit.

While the suspect vehicle traveled westbound on the 101, exited on to I-17 and traveled northbound, a coordinated effort by DPS personnel and Phoenix Firebird to apprehend the suspect began, however, the involved DPS employees were not actively engaged in a pursuit due to the fact they maintained a position at a significant distance behind the suspect vehicle at the request of Phoenix Firebird, and although they were operating police units, there was no evidence at that time supporting the fact the suspect was aware of their presence.

At milepost 242 on I-17, DPS Trooper Timothy Williams, in a fully marked police unit, initiated a DPS pursuit intervention technique by deploying Stop Stick tire deflation devices, which were successful in disabling the suspect vehicle's left front tire. At this point, *an active attempt by a law enforcement trooper in a police unit to apprehend a suspected law violator in a motor vehicle, when the operator of that motor vehicle is aware of the trooper's presence and is resisting apprehension by maintaining or increasing speed, ignoring the trooper, or attempting to elude the trooper*, was made and definitively defined this incident as a pursuit. I consider this incident to be a pursuit for all involved DPS personnel operating police units from this point of the incident to its conclusion at milepost 282 on I-17.

Based on the circumstances and the totality of information I have post incident, I find it **reasonable** that involved DPS employees have conflicting thought as to the fact this incident was a pursuit, and/or when it became a pursuit as prescribed by DPS policy.

Recommendation:

Training - I recommend all involved DPS personnel review this finding and the definition of a pursuit as prescribed by policy.

DPS General Order 4.1.20; Pursuit Operations

I. Policy

- A. The Department's primary concern in pursuit driving is to protect the lives and safety of all citizens and troopers. Driving under pursuit conditions does not relieve troopers of the responsibility to continually assess the risks associated with pursuit driving and the risk or danger to life and property. Troopers are required to use only that level of force which is reasonable and necessary to accomplish their lawful objective.*

Findings:

The suspect, Bradley Moore, chose to commit felony crimes which led to this pursuit and chose to continue to commit crimes during the pursuit. At any time during the duration of his crime spree, he could have made the decision to stop and peacefully surrender, which would have avoided the pursuit from occurring. Additionally, at any time during the pursuit, he could have made the decision to stop and peacefully surrender, which would have terminated the pursuit. Unfortunately, he did neither.

Note: An investigative interview with Moore's parents following his death, revealed that he was aware police were following him earlier the day of the incident. This was made evident by the phone call he made to his father. During the conversation, he asked his father if he saw him on the news and explained he was being chased by police and helicopters.

DPS personnel responded and coordinated an operation to bring the incident to resolution, which included the successful deployment of tire deflation devices that unfortunately did not disable the suspect's vehicle enough for the pursuit to be terminated. Suspect Moore made the decision to operate a partially disabled vehicle after police intervention, until the time his vehicle violently left the roadway, he was ejected and died as a result of the injuries he incurred.

It is uncertain, but highly unlikely given the events leading to his death, that suspect Moore would have stopped if DPS personnel would have disengaged and totally terminated their involvement in the pursuit.

DPS personnel communicated the possibility of a carjacking (robbery), the possibility of two people occupying the suspect vehicle, and were uncertain if one was a victim of kidnapping being held against their will, or if the second possible occupant was an additional suspect in a crime. Given the information they had at the time, the decision was made to continue the pursuit. It is my finding that decision to continue the pursuit was *reasonable*.

Involved personnel continually assessed the risks associated with pursuit driving and the risk of danger to life and property during the duration of the pursuit, furthermore, they used only the level of force which is reasonable and necessary to accomplish their mission. I find all involved personnel actions to be *reasonable*.

Recommendation:

No further action is necessary.

II. Pursuit Responsibilities

All troopers, supervisors, and commanders have the responsibility of ensuring compliance with department policy.

Not all involved personnel were compliant with this department policy. The findings and recommendations of such, will be addressed in the respective policy sections noted below.

III. Pursuit Commander Responsibilities

A. The initiating trooper is the pursuit commander and shall assume and retain pursuit command until relieved, the pursuit has terminated, or the need to transfer pursuit command is necessary to complete the objectives of the pursuit.

Finding:

Lieutenant Colonel Silbert was off-duty, driving his personally owned vehicle, and followed the suspect vehicle at the request of the Gilbert Police Department Officer Rogers, Call-taker Spencer Jaekel, and DPS Dispatcher Sandra Platt. He provided updated information as to the location and activity of the suspect vehicle with his cell phone via 911. He was not in pursuit of the vehicle at any time as originally noted in this review, due to the fact he was not in a police unit. Lieutenant Colonel Silbert did not declare he was in pursuit, assume command of the pursuit, nor did he command any aspect of the operation while he was traveling in his personal vehicle. Based on the information I have post incident, it is evident Lieutenant Colonel Silbert desired not to be involved any more than necessary and as explained in his investigative interview, he was expecting a DPS involved trooper to take command of the incident, which is a reasonable expectation. I find Lieutenant Colonel Silbert's actions to be *reasonable* and recommend no further action be taken.

Captain Steve Harrison had knowledge of the incident prior to the pursuit and communicated events pertaining to the incident telephonically to his supervisor, Major Deston Coleman, and sought direction from Major Coleman about what to do. Major Coleman did not possess sufficient information and relied on Lieutenant Colonel Silbert's knowledge of what he had, training, and experience, and advised Captain Harrison to allow Lieutenant Colonel Silbert to "call-it." Major Coleman did not prohibit units from assisting. At the time Major Coleman provided this direction, the incident was not a pursuit as prescribed by DPS policy. I find Major Coleman's actions to be *reasonable*.

There is a clear difference in "calling a pursuit" and commanding one. Calling a pursuit is the act of announcing information pertaining to the location and direction of travel, description of the pursued vehicle, speed of the pursued vehicle, hazards, traffic conditions, etc. This can be accomplished by the pursuit commander, primary unit, or secondary units. Per DPS policy, commanding a pursuit is the act of controlling the pursuit by designating involved unit responsibility, accessing the need for air support, determining the need for emergency response operation by pursuing units, directing all communications, maintaining operational control, and ordering termination of the pursuit if necessary. Per DPS policy *the initiating trooper is the pursuit commander and shall assume and retain pursuit command until relieved, the pursuit has terminated, or the need to transfer pursuit command is necessary to complete the objectives of the pursuit*. I have determined that it was assumed by several directly and indirectly involved personnel, that Lieutenant Colonel Silbert was the initiating trooper based on the fact he was following the suspect vehicle and providing information about it. And, because of this, it is probable that directly involved personnel assumed he was the pursuit commander as prescribed by policy. However, at the time this incident became a pursuit (originally noted in this review) the fact directly involved personnel had knowledge that Lieutenant Colonel Silbert was in an unmarked vehicle, was communicating telephonically via 911, were aware he had no radio communications, and were provided no command direction from him, was clear indication that he was not commanding the pursuit, nor was he serving as a primary unit. No directly involved DPS trooper declared or took command of the pursuit.

I understand that unique circumstances probably led to the absence of a pursuit commander, but find the fact that no directly involved police unit took command of the pursuit is *not reasonable*.

Note: Captain Harrison was the highest ranking, directly involved DPS trooper for the longest duration of the pursuit and was driving in close proximity to the suspect vehicle, and the primary and secondary units in the pursuit. Sergeants Powell and Felan served as primary and support units and communicated more frequently than other directly involved personnel. Any of these three would have been candidates to serve as pursuit commander and could command the pursuit and should have, the most likely candidate being Captain Harrison.

Recommendation:

Training- all directly and indirectly involved personnel should review the pursuit policy and understand taking command of a pursuit is required and the act of commanding a pursuit is inherently different than calling a pursuit.

IV. Primary Unit Responsibilities

- A. Verbally declare or acknowledge designation as the primary unit when two or more DPS units are in pursuit. The primary unit is the lead/first vehicle in a pursuit, generally the initiating unit.*

Findings:

Acknowledgement as primary unit was not declared by any directly involved trooper, however the responsibilities of the primary unit were completed by Sergeant Powell. Sergeant Powell's responsibilities as primary unit were conducted within policy, except for not declaring his status as such, and I find his actions were *reasonable*.

Recommendation:

Training- Sergeant Powell shall review the pursuit policy and be directed to declare his status as primary unit while engaged as such in future pursuit operations.

V. Secondary Unit Responsibilities

- A. Verbally declare or acknowledge designation as a secondary unit when two or more DPS units are in pursuit. The secondary unit is the police vehicle(s) directly behind the primary unit.*

Findings:

Acknowledgement as secondary unit was not declared by any directly involved trooper, however the responsibilities of the secondary unit were completed by Detective Kendal Hill, due to the fact he was driving the police vehicle directly behind the primary unit (Powell). Detective Hill's responsibilities as secondary unit were within policy, except for not declaring his status as such, and I find his actions were *reasonable*.

Recommendation:

Training- Detective Hill shall review the pursuit policy and be directed to declare his status as secondary unit while engaged as such in future pursuit operations.

VII. Support Unit Responsibilities

Findings:

I find all support unit responsibilities were within policy and reasonable.

Recommendation:

No further action necessary.

VIII. Operational Communications Responsibilities

B. Monitor the pursuit and broadcast information to all participating units.

Findings:

Dispatchers monitored the pursuit and broadcasted a significant amount, but not all information, to participating units. The fact Lieutenant Colonel Silbert was driving an unmarked vehicle was broadcasted and it was discovered during the incident he was communicating on his cell phone via 911. It should have been apparent to those involved that he had no ability to directly communicate, however, it could have been communicated to everyone involved more directly and clearly to ensure they all understood.

Note: The fact Lieutenant Colonel Silbert was in his personally owned vehicle was clearly announced by him to Gilbert Police Department Call-taker, Spencer Jaekel, but was not relayed to DPS Dispatchers. No fault of DPS OpComm that the information was not broadcasted. It was realized by several people involved that he was not in a DPS unit and driving his personally owned vehicle, but this was not clearly communicated by involved personnel (troopers and dispatchers).

The only criminal act relayed by OpComm was an ATL for a stolen vehicle and later the fact the suspect was driving a confirmed stolen vehicle. GPD Call-taker Jaekel told Lieutenant Colonel Silbert that their detective “has what you saw, you witnessed a carjacking.” This statement led Lieutenant Colonel Silbert to believe that this incident was more serious than an occupied stolen vehicle. Mr. Jaekel did not relay this information to OpComm, and in review of the documentation post incident, Mr. Jaekel did not intend to refer to the crime as a car-jacking. However, it was interpreted by Lieutenant Colonel Silbert as such, and Mr. Jaekel understands how he could interpret it that way. There was no fault by DPS that the carjacking information was not broadcasted from the onset.

During the incident, Lieutenant Colonel Silbert indicated to GPD that a traffic break would be beneficial. GPD relayed that information to DPS OpComm. DPS Dispatcher Lisa Tarr, did in fact advise Metro South units that “PD” was requesting a “traffic break” and one unit responded to assist but was a significant distance away. The need for a traffic break was never again requested after the original request and once there were multiple DPS units following the suspect at a distance, the need for one wasn’t necessary.

During a post incident interview, DPS Dispatcher Hilda Teahan stated the GPD was advising the DPS unit behind the stolen vehicle requested a “traffic break”. Dispatcher Teahan stated she thought this was odd, since a “traffic break” was something used by Highway Patrol Division Troopers to slow down traffic to remove debris or some other hazard from the roadway. Mrs. Teahan stated a “traffic break” was not something used to stop a fleeing vehicle.

Traffic breaks can be used for a variety of reasons to improve the safety of the motoring public and officers involved in an incident. The request of a traffic break during this incident was to create a safe distance between the suspect vehicle and motoring public.

In review of the Metro Central audio recording, it was noted that DPS Dispatcher Jennifer Grzybowski broadcasted "DPS 2 is behind in an unmarked as well as Gilbert PD, Salt River, and Scottsdale." I could not find documentation to support that Salt River PD and Scottsdale PD were following the vehicle, and it is uncertain why these two units were added to the incident via radio broadcast.

As the incident traveled northbound on I-17, Phoenix Firebird was overhead and relaying information about the suspect vehicle. In review of the audio recording, a clear communication by Phoenix Firebird was made, he stated: "since this is DPS jurisdiction, do you want to follow at a distance, or what are you guys thinking"? No response was provided by troopers involved or by Dispatcher Debra Fajardo. This was an important question that needed an answer. Upon hearing no response from troopers, Dispatcher Fajardo should have broadcasted a request to involved troopers for them to answer the question.

I find that inter-agency communication from GPD failed in providing DPS with two important key factors: the fact Lieutenant Colonel Silbert was in his personally owned vehicle, and the information pertaining to the car-jacking.

Involved DPS OpComm personnel were *reasonable* in their actions, however the aforementioned items need to be addressed.

Recommendation:

Training- Involved personnel should review recordings of the incident. They should be reminded that information that is not accurate should not be broadcasted; information that is uncertain should be clarified; the act of conducting a traffic break and why they are conducted should be clarified; and important questions from involved units should be answered.

IX. Pursuit Procedures

- A. *Troopers driving DPS units in pursuit operations shall have activated red or red and blue emergency lights and sirens during the entire pursuit.*

Finding:

Numerous troopers including the primary unit, and multiple secondary units did not have activated red or red and blue emergency lights (facing to the front) and sirens during the entire pursuit. This deviation of policy was identified by units involved in the pursuit and the decision was made and communicated to disengage lights and sirens in an effort to not "push" the suspect to speeds higher than he was travelling. It is clear this action was taken as a safety precaution to all involved. Although it is not consistent with policy, I defer to *DPS General Order 1.1.10; Department Directives – Employees who make decisions or take actions contrary to directives*

must be able to articulate the necessity and soundness of such decisions or actions. Ultimately, the employee's decisions or actions shall be evaluated based upon the criteria of reasonableness rather than the correctness of outcome.

I find the decision/action made contrary to this policy to be **reasonable**. The decision was made deliberately, and was articulated during and after the incident.

Recommendation:

No further action be taken.

- B. Only the primary unit and the pursuit commander shall communicate on the radio. All other units will hold their traffic unless an emergency transmission is necessary or they are acknowledging an assignment from the pursuit commander.*

Finding:

As previously found, no DPS unit took command of the pursuit. The primary unit, although not declared as such, was Sergeant Brandon Powell, who communicated frequently on the radio. The secondary unit, although not declared as such, was Sergeant DJ Felan, who communicated often on the radio. Multiple support units also communicated on the radio but it was determined that all of them communicated important information pertinent to the pursuit. Most of their communication was advising of their response, location, and intent to conduct tasks associated with the pursuit. I discovered no unnecessary communication that should have not been broadcasted. I find involved troopers were **reasonable** in their actions.

Recommendation:

Consider policy revision – Very few, if any, pursuit operations will be conducted with only the pursuit commander and primary unit communicating on the radio. There will likely always be the necessity for additional units to communicate, therefore this section of policy is too restrictive as written. Given the probability of multiple units communicating in future pursuit operations, I recommend a revision of the policy to allow necessary communications by involved troopers to be authorized, with the caveat that under no circumstances should unnecessary communication be had.

- F. Units in pursuit normally shall be limited to no more than two, a primary and a secondary. However, with the pursuit commander's approval, the number of secondary units may be adjusted to fit the situation.*

Finding:

As previously found, no DPS unit took command of the pursuit. With approval of a pursuit commander, the number of secondary units may be adjusted to fit the situation. There were numerous units involved as secondary units which well exceeded the amount prescribed by policy. Given the circumstances, I find no reason a pursuit commander would have not authorized additional units. I find the additional support units participating in the pursuit to be warranted **reasonable**.

Recommendation:

Consider policy revision – Very few, if any, pursuit operations will be limited to two troopers. Additional secondary troopers are commonly needed to complete the tasks associated with pursuit responsibilities. Intervention techniques such as deploying tire deflations devices, channeling vehicles, establishing roadblocks, conducting traffic breaks, etc. as well as having specialty units such as K9 equipped troopers, SWAT troopers, etc. ready and able to deploy, could be necessary depending on the circumstances. Therefore, I believe this section of policy is too restrictive, as written, and recommend a revision of the policy.

X. Crossing District Borders

- A. Troopers shall be aware that additional pursuit restrictions may exist in bureau or district orders.*

Finding:

No findings noted in this incident in regards to this section of the policy.

Recommendation:

Consider Policy revision- if additional pursuit restrictions exist in bureau or district orders, I recommend they be quashed and removed from circulation. The Department pursuit policy should be all encompassing and the Department should only have one order, not to be superseded by any other. Removal of this section of policy recommended.

- B. When a pursuit enters one district from another, the district receiving the pursuit will assume pursuit command when sufficient units are in place in the receiving district to effectively safeguard public safety. Only the initiating trooper from the preceding district shall proceed to the termination point to provide information that may be required for the arrest.*

The incident traveled through Metro South, East, West and as previously found, was not considered a pursuit until the first intervention technique was deployed at milepost 242 on Interstate 17, in District 12. The first available District 12 troopers were positioned to deploy intervention techniques and were unable to assume command of the pursuit. I find the actions of the involved troopers to be *reasonable*.

Recommendations:

No further action be taken.

XI. Additional Safety Considerations

- A. All vehicles not tested and approved for high speed driving as primary or secondary vehicles shall not be operated at speeds*

above 85 MPH. This includes specialty and non-police model vehicles (i.e. sport utility vehicles, sedans, pickup trucks, etc.).

Findings:

The pursuit traveled at speeds between 70 and 95 MPH and the primary, secondary, and support units operating in the pursuit have been determined to all be police model vehicles. I find this to be consistent with policy and *reasonable*.

Recommendations:

No further action be taken.

- B. Unmarked units and motorcycles are not appropriately equipped to participate in pursuit operations and shall be replaced by appropriately marked units as soon as practical.*

Findings:

During the incident pre-pursuit, DPS Motor Officer Joseph Ramsey was the first DPS unit behind Lieutenant Colonel Silbert as the suspect traveled on the Loop 101. Lieutenant Colonel Silbert observed Trooper Ramsey at a distance and Trooper Ramsey never engaged in a pursuit of the suspect due to the request made by Phoenix Firebird for all units to stay back. Trooper Ramsey followed at a distance advising investigators that although he heard other units responding, he believed he was the only DPS unit with Lieutenant Colonel Silbert.

As the incident traveled northbound on I-17, Trooper Ramsey advised investigators that DPS Detective Hill and Sergeant Powell passed him near Table Mesa Road. Following this several additional support units joined the incident and followed. I find Trooper Ramsey's actions to this point in the incident to be *reasonable*. As previously found, this incident turned to a pursuit at milepost 242. From that point on there were sufficient resources participating. Trooper Ramsey continued in the pursuit on his motorcycle and followed it to its point of termination. I find that Trooper Ramsey was *not reasonable* in his actions and should have removed himself as prescribed by policy.

Note: Captain Harrison broadcasted on the radio that he had a motor unit and several other units with him, well in to the pursuit. Captain Harrison should have recognized the need to terminate Trooper Ramsey's involvement but did not.

Shortly after the pursuit entered District 12, Major John Philpot broadcasted a request to replace Lieutenant Colonel Silbert with a marked unit, if it was possible. Captain Harrison advised "we would, if we could". Sergeant Felan broadcasted for this not to be done, explaining that they did not want to push the suspect any harder.

Sergeant Felan's deviation of policy and recommendation from Major Philpot was communicated and his reason was articulated during the pursuit. It is clear this action was taken as a safety precaution to all involved. Although it is not consistent with policy, I defer to *DPS*

General Order 1.1.10; Department Directives – Employees who make decisions or take actions contrary to directives must be able to articulate the necessity and soundness of such decisions or actions. Ultimately, the employee's decisions or actions shall be evaluated based upon the criteria of reasonableness rather than the correctness of outcome. I find the decision/action made contrary to the policy and command directive to be **reasonable**.

Captain Harrison's response to Major Philpot's recommendation was "we would, if we could," leading me to believe that he thought this should have been done, however, nothing found during this review supported that Captain Harrison ordered a marked unit to take over, nor is it apparent the action was attempted and unsuccessful prior to Major Philpot's directive. Captain Harrison did not articulate a sound reason to not to follow the recommendation, however, it was corrected by Sergeant Felan's actions.

Recommendation:

Training – Trooper Ramsey and Captain Harrison should review the pursuit policy and be directed to comply with this section in regards to the involvement of motorcycles in the future. Captain Harrison should review General Order 1.1.10 and be cognizant of his requirement to articulate his reason for not following department policy or command directives in the future.

XII. Authorized Intervention

- A. *When pursuing a vehicle which is actively avoiding apprehension and deadly physical force is not justified, the Class B roadblock, channelization, and/or tire deflation device may be used to stop the vehicle based upon the trooper's training and experience. For the purpose of this GO channelization is the deliberate directing of a vehicle into a given path or area by the use of stationary objects (pylons, barricades, vehicles) placed in its current path of travel, and a tire deflation device is a tool which, when successfully deployed into the immediate path of a pursued vehicle, causes controlled air loss of the striking tire(s).*

Findings:

Several involved troopers deployed authorized intervention, specifically, tire deflations devices. I find their actions to be consistent with policy and **reasonable**.

Recommendations:

No further action be taken.

XIII. Pursuit Termination

- A. *Pursuits shall be terminated immediately when:*

2. *A clear and unreasonable hazard exists to the trooper, fleeing suspect, or other citizens.*

Although troopers continued to pursue the vehicle in varying road and weather conditions and after it had been partially disabled by tire deflation devices, nothing suggests that an unreasonable hazard existed. The suspect vehicle traveled at speeds between 70 and 95 MPH for a significant distance prior to the pursuit and while the pursuit was active, even after successful tire deflation devices were deployed deflating two of its tires, but not disabling it from operation. Due to the possibility of two people occupying the suspect vehicle, the concern one could be a victim/hostage, and the suspicion the suspect car-jacked the vehicle and could potentially car-jack another, I find the decision to continue the pursuit and not terminate was **reasonable**.

Recommendation:

No further action be taken.

3. *The pursuit leaves a controlled access highway into a densely populated or congested environment and the only known offense is a traffic infraction, misdemeanor, or non-violent felony, including felony flight.*

Findings:

The only time the suspect vehicle left a controlled access highway was when he exited the 101 at 56th street and traveled city streets with GPD Officer Biggs following him, not engaged in a pursuit. Lieutenant Colonel Silbert left the controlled access highway (101) concerned that Officer Biggs was by himself with no back-up. No police action was taken and as previously found in this review, Lieutenant Colonel Silbert was not in pursuit of the suspect vehicle as prescribed by DPS policy. While the pursuit operation was active, the suspect vehicle never left a controlled access highway and remained on I-17, therefore, I find no bearing on this policy in regards to this pursuit.

Recommendation:

No further action be taken.

4. *The level of the criminal act does not justify the risk to life and property by the immediate apprehension of the suspect.*

Findings:

During the pursuit, troopers had knowledge that the suspect had stolen multiple vehicles, possibly committed robbery (car-jacking), and the suspect vehicle was possibly occupied by two people. It was uncertain if the additional occupant was a suspect or victim/hostage. I find the decision to continue the pursuit and not terminate to be **reasonable**.

Recommendation:

No further action be taken.

C. Consideration should be given to terminating the pursuit when one or more of the following factors are present:

- 2. The suspect is identified to the point where later apprehension can be accomplished and continuing the pursuit would serve only to increase the risk to all involved.*

Although one suspect was identified during the pursuit, the second occupant of the vehicle was not. It was uncertain if the additional occupant was a suspect or victim/hostage. I find the decision to continue the pursuit and not terminate to be **reasonable**.

XIV. Interaction with Other Jurisdictions

- B. Other agency air support units who assist in department-initiated pursuits shall be responsible for providing appropriate information to all involved units. The Department pursuit commander will retain overall command of the pursuit.*

Finding:

Phoenix Firebird was the only air support that responded to the incident pre-pursuit. Firebird announced information pertaining to the incident and requested that units “stay back” and “back-off,” and they only wanted unmarked units to stay with it, which was communicated to Lieutenant Colonel Silbert by DPS OpComm. No information in the review indicated that he did not back-off and he was essentially in an unmarked unit and was involved at the request of others. Per his investigative interview, Lieutenant Colonel Silbert accelerated and closed the distance between himself and the suspect vehicle as DPS Dispatcher Platt asked him for updates. It is clearly communicated by Firebird that, “I got everyone to back off, I got Gilbert to back off, I’ve got DPS to back off,” and once again when the same pilot advised “I have them all backed off.” Furthermore, it was stated by multiple units in their investigative interviews that they honored the request of Firebird.

Firebird terminated their involvement at Table Mesa Road (MP236) prior to the incident becoming a pursuit. Because their support was not provided during the pursuit operation, it does not have bearing on this policy. However, their support pre-pursuit raised concern that I will address. Air support utilized during a police operation is a valuable resource and should be used as such, for a purpose specific to its capabilities and mission. Air support should not assume command of a police operation or incident on the ground and should not dictate with full authority the actions to be taken by involved troopers.

All responding troopers complied with Firebird’s direction to back-off and none of them responded to a position to relieve Lieutenant Colonel Silbert from the incident. Previously in this review it was noted that not all involved troopers were aware Lieutenant Colonel Silbert was in his personally owned vehicle, but as the incident continued to transpire, that knowledge was

learned or realized by some. The first to realize this was Captain Harrison, as noted in his investigative interview when he told investigators he was unaware of the type of vehicle Lieutenant Colonel Silbert was driving until Firebird was overhead and mentioned that a black GMC truck was behind the stolen vehicle. Harrison recognized the description of the truck to be Lieutenant Colonel Silbert's personally-owned vehicle. Investigator Vasey asked Captain Harrison if it was her in her personally-owned vehicle, following the stolen vehicle, would he have ordered her to terminate. Captain Harrison said "absolutely."

Once a DPS unmarked vehicle was in position to replace Lieutenant Colonel Silbert, Captain Harrison should have ordered it to replace him and terminated Lieutenant Colonel Silbert's continued involvement in the incident. If it was the correct action to take for a trooper below him in rank, it was the correct action to take for one higher than him in rank. This is a unique and awkward decision for Captain Harrison to make due to the rank and command structure of law enforcement and the fact the order would have been given to the second highest ranking trooper in the Department. Lieutenant Colonel Silbert was expecting to be relieved by a DPS unit which, as previously noted, is not an unreasonable expectation.

It was noted that Captain Harrison prohibited additional support units under his district command from participating, when he gave the direction for additional units not to leave the district boundaries. When he gave this directive, there was a felony crime in progress and police action being coordinated to stop that crime. Additional police support was needed and rather than directing units not to respond, he should have directed them otherwise. I find his actions to be *not reasonable*.

Recommendation:

Training- It should be made clear to all sworn employees that air support utilized during a police operation is a valuable resource and should be used as such, for a purpose specific to its capabilities and mission. Furthermore, air support should not assume command of a police operation or incident on the ground and should not dictate with full authority the actions to be taken by involved troopers.

Captain Harrison should be advised that the correct action should have been to replace Lieutenant Colonel Silbert with a police unit as soon as practical and provide additional support as needed.

XV. Critical Incident Pursuit Process

- A. Pursuits identified as meeting the criteria of a critical incident shall be investigated, reported, and reviewed in accordance with the Critical Incident Manual (DPS 932-00235).*

Finding:

Following the termination of the pursuit, the incident was immediately recognized as a critical incident by on-scene personnel. Captain G.R. Manera assumed command of the incident and it

was investigated in accordance with the Critical Incident Manual. I find the involved troopers were within policy and their actions were *reasonable*.

Recommendation:

No further action be taken.

Highway Patrol Division Order 2.56; Use of Tire Deflation Devices

I. *Policy*

Tire deflation devices have the potential to save lives, prevent injuries, and reduce property damage. Highway Patrol troopers confronted with a vehicle which refuses to stop may use tire deflation devices as a means to slow or stop that vehicle.

Findings:

Troopers Williams, Craft, Watson and Sergeant McFarland all deployed tire deflation devices during the pursuit. Two attempts were successful (Williams and McFarland) in disabling the suspect vehicle and the remaining two attempts (Craft and Watson) were unsuccessful due to the fact the suspect drove around the devices (Stop Sticks) they deployed. Additionally, Lieutenant Colonel Silbert's personally-owned vehicle was disabled by the device Trooper Watson deployed. All troopers who deployed tire deflation devices, did so within the directives prescribed by this policy and I find them to be reasonable.

Recommendation:

No further action be taken.

Operational Communications Bureau Policy Manual, Policy #40.14; Telephone Calls
Other Agency Jurisdiction

I. *Purpose*

This bureau policy will provide guidelines in the handling of received emergency and nonemergency telephone calls that fall in the jurisdiction of another public service or law enforcement agency.

Finding:

This policy was considered in the investigation of the incident. In review of the policy it specifically states that it is a guideline for handling emergency and non-emergency telephone calls that fall in the jurisdiction of another agency. Although Lieutenant Colonel Silbert first witnessed the events that led to this incident in the City of Gilbert, it was also within the jurisdiction of DPS. I find no bearing on this policy in regards to this incident.

Recommendation:

No further action be taken.

Operational Communications Bureau Policy Manual, Policy #40.13; Telephone Calls
DPS Jurisdiction.

II. Policy

A. Pertinent information

When an employee receives a call on an incident or collision in which law enforcement, medical, or fire response is necessary, the following guidelines shall apply.

- 1. The employee shall obtain pertinent information available to ensure an appropriate response by public safety personnel. The following minimum information shall be captured and documented:*
 - a. An exact location of the incident*
 - b. Type of incident*
 - c. Time element involved*
 - d. Any additional critical information related to the specific incident such as, injuries, weapons, vehicle suspect descriptions, violence potential, fire, or blockage of a roadway.*
 - e. The caller's name and contact telephone number for all calls in which an incident is generated.*

B. Incident Criterion

The employee shall create a computer aided dispatch (CAD) incident and route the incident to the appropriate dispatch district for broadcast. If a caller is actively following an ATL vehicle, the type code priority will be raised level 1. This will help the dispatcher recognize the call as a high priority incident requiring immediate broadcast and unit assignment.

C. Safety Consideration

Employees shall consider safety when conversing with a caller reporting unlawful activity in progress, especially when that are using a cellular device while driving.

Employees shall take the following into account when determining whether to keep a caller on the phone to provide incident updates:

- 1. Does the caller have a visual of the activity or suspect vehicle?*
- 2. Is the incident an immediate threat to public safety?*
- 3. Is the caller willing to maintain visual contact and provide updates, including the name and number?*
- 4. Is the caller able to obey traffic laws?*
- 5. Are other callers reporting the same or similar activity related to the incident?*
- 6. Are units in the area to intercept the suspect vehicle in a timely manner?*

Finding:

Involved OpComm personnel actions were within policy and *reasonable*.

Recommendation:

No further action be taken.

Operational Communications Bureau Policy Manual, Policy #30.05; Priority Traffic

B. Dispatcher Responsibilities Priority Traffic Events

The dispatcher shall:

- 1. Activate the alert tone.*
- 2. Verbally advise all units that priority traffic is in progress and that all non-emergency radio traffic shall be restricted.*
- 3. Activate the priority marker.*
- 4. As necessary, repeat radio traffic pertaining to the event to continuously advise units of the current status of the situation and that nonemergency radio traffic shall be held.*

Finding:

Involved OpComm personnel actions were within policy and *reasonable*.

Recommendation:

No further action be taken.

Operational Communications Bureau Policy Manual, Policy #30.05; Priority Traffic

I. Purpose

This bureau policy will provide guidelines to employees on documenting and notifying technical personnel when bureau electronic equipment experiences problems or fails to operate.

Finding:

This policy was considered in the investigation of the incident. In review of the policy it specifically states that it is a guideline for employees on documenting and notifying technical personnel when bureau electronic equipment experiences problems or fails to operate. The only indication that Wireless Services Bureau equipment experienced problems was presented in the investigative interview of Dispatcher Amelia MacMurtrie. There are no policy concerns noted and this issue is covered in the subsequent *Equipment* section of this review.

Recommendation:

See the noted recommendations contained within Equipment section of this review.

Operational Communications Bureau Policy Manual, Policy #30.05; Priority Traffic

Finding:

This policy was considered in the investigation of the incident. In review of the policy it is intended to provide direction on how messages are handled by OpComm centers. For example, when an individual contacts OpComm and requests a message be sent to an employee. I find no bearing on this policy in regards to this incident.

Recommendation:

No further action be taken.

Training

Findings:

In review of the involved employees training records provided in the investigative file, I find that all involved employees had adequate training prior to the incident to compete the individual and collective responsibilities of the incident. In preceding sections of this review, I have recommended several items of training that I believe could improve performance of involved employees in like situations in the future. This is not to be confused with the fact I believe they were adequately trained prior to incident as previously noted.

Recommendation:

Note: The following training recommendation is in addition to other recommended training noted in preceding sections of this review.

In review of the incident I have noted that some of the involved employees attended a Department E-learning training course in 2010, titled: *Pursuit Safety*. The following involved personnel show no record (in the investigative file) of attending this training course:

Lieutenant Colonel Heston Silbert
Trooper Wesley Watson
Trooper Kendal Hill
Trooper Timothy Williams
Major Deston Coleman
Trooper Albert Ramos
Dispatcher Hilda Teahan
Dispatcher Sandra Platt
Dispatcher Lisa Tarr
Dispatch Supervisor, Cynthia Hudson
Dispatcher Jennifer Grzybowski
Dispatcher Debra Fajardo
Dispatcher Nola Cardini
Dispatcher Amelia MacMurtrie

It is presumed none of the dispatchers attended the training because it wasn't required or offered to them, but this should be clarified by their respective Division. All involved personnel who attended this training did so in 2010, and it is uncertain if the training has been offered since. DPS involvement in pursuit operations is a standard and frequently reoccurring situation for our employees; therefore, I recommend the Department's *Pursuit Safety* training be evaluated for current applicability, updated if necessary, and required by all employees who are involved in, or manage pursuit operations.

Equipment

Finding:

Trooper Joseph Ramsey explained during his investigative interview that the DPS radio on his motorcycle did not work and he was having difficulty at times communicating with it. He advised he had his radio looked at four or five times, the most recently being approximately one week prior to the incident.

Captain Harrison explained during his investigative interview that he had difficulty locating the D12 frequency on his radio; he was the only involved trooper that expressed concerns with this.

Dispatcher Jennifer Grzybowski explained during her investigative interview she had trouble during the incident with the CAD system, specifically, the "Recall" window. She said the way

the system was built, makes it very easy for a dispatcher to miss information that came in to the "Recall" window; she is the only involved dispatcher who expressed concerns with this.

Detective Albert Ramos explained during his investigative interview he attempted to inform OpComm multiple times that he was en route, however, his vehicle radio was not operating properly. Detective Ramos stated he attempted to use his portable radio as well, however, the OpComm dispatcher said they could not clearly hear him. Detective Ramos, a non-department task force employee, said he believed DPS radios were "terrible."

Dispatcher Amelia MacMurtrie explained during her investigative interview equipment functioned properly, however, communication in that area (D12 area of pursuit) is always difficult due to the terrain and radio tower location.

Sergeant John McFarland explained during his investigative interview that when Stop Sticks were used and subsequently confiscated for investigative purposes, replacement Stop Sticks should be provided.

Recommendations:

If Trooper Ramsey's radio cannot be fixed, he should be issued a new one.

Captain Harrison should contact Wireless Services Bureau and work with them to identify why it was difficult for him to locate the D12 radio frequency and seek corrective action to resolve the problem.

Wireless Services Bureau personnel should inspect the CAD system, specifically the "recall" function, and determine if it can be reconfigured or enhanced to improve its capabilities and usability.

Detective Ramos should contact Wireless Services Bureau and request they conduct diagnostics to identify what is causing his in-car and portable radio to malfunction and request repairs be made.

Wireless Service Bureau personnel should investigate issues creating communications problems in the geographical area of the pursuit and take corrective action if practical.

Highway Patrol Division should ensure there are sufficient stop sticks available to replace those confiscated for investigative purposes.

Legal

Finding:

Involved troopers had information the suspect, had committed, was committing, and was possibly committing the following crimes:

13-1814. Theft of means of transportation

A. A person commits theft of means of transportation if, without lawful authority, the person knowingly does one of the following:

- 1. Controls another person's means of transportation with the intent to permanently deprive the person of the means of transportation.*

D. Theft of means of transportation is a class 3 felony.

13-1902. Robbery

A. A person commits robbery if in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property.

B. Robbery is a class 4 felony.

13-1304. Kidnapping

A. A person commits kidnapping by knowingly restraining another person with the intent to:

- 1. Hold the victim for ransom, as a shield or hostage; or*
- 2. Hold the victim for involuntary servitude; or*
- 3. Inflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony; or*
- 4. Place the victim or a third person in reasonable apprehension of imminent physical injury to the victim or the third person; or*
- 5. Interfere with the performance of a governmental or political function; or*
- 6. Seize or exercise control over any airplane, train, bus, ship or other vehicle.*

B. Kidnapping is a class 2 felony

28-622.01. Unlawful flight from pursuing law enforcement vehicle

A driver of a motor vehicle who wilfully flees or attempts to elude a pursuing official law enforcement vehicle that is being operated in the manner described in section 28-624, subsection C is guilty of a class 5 felony. The law enforcement vehicle shall be appropriately marked to show that it is an official law enforcement vehicle.

In regards to the performance of their duty, I find that all involved troopers supported the Constitution of the United States and the Constitution and laws of the State of Arizona, did

nothing outside the provisions set forth in them, and they faithfully and impartially discharged the duties of a peace officer for the State of Arizona.

Recommendation:

No further action be taken.

Additional Considerations

Finding:

During review of this incident it was noted that the contemplation of conducting a PIT maneuver was made by Sergeant Brandon Powell during the pursuit. Sergeant Powell requested authorization to conduct the PIT maneuver and it was authorized by Lieutenant Colonel Silbert. PIT maneuvers at high speeds are extremely dangerous and may induce serious or deadly injury to those involved, which was identified by Major John Philpot and explained in his phone call to Lieutenant Colonel Danny Lugo during the incident, and documented in his investigative interview.

In his investigative interview, it was made clear by Sergeant Powell that he would not have attempted the maneuver unless the right opportunity presented itself. He further stated he would not have attempted it at high speeds and stated a speed of 30 MPH would have been one of his determining factors. In Lieutenant Colonel Silbert's investigative interview he made it clear that his authorization was not intended as a blanket authorization for the PIT maneuver and expected it to be done under the right circumstances.

The PIT maneuver was not attempted. I find the considerations, decisions and articulation of such, by of both Sergeant Powell and Lieutenant Colonel Silbert to be *reasonable*.

Recommendation:

The PIT maneuver is not addressed in the Department's pursuit policy. Consideration for adding the PIT maneuver as an authorized intervention technique should be made. If it is adopted in to policy, appropriate training should be provided and only personnel who have been trained in the tactic should be authorized to deploy it.

Finding:

During review of this incident it was noted that the thoughts and decisions of numerous involved employees, of varying ranks and positions, was influenced by the fact Lieutenant Colonel Silbert was involved, and is the second highest ranking trooper in the Department. The fact he was off-duty, in his personally owned vehicle, and couldn't directly communicate with all but one of the involved employees, added unusual circumstances to the incident. I suspect most of our involved employees have never been in a fluid incident presenting these circumstances, involving the second highest ranking trooper in the Department. This undoubtedly presented them with a unique situation to manage. Considering the authority, responsibility and respect given to those holding a position of rank higher than an employee involved in the same situation,

makes it difficult to expect our involved employees would manage this situation without contemplating who and what was involved. This presents a challenge to our employees and can only be resolved with the understanding that if an employee is faced with like circumstances, they understand that is not only acceptable, but expected for them to make decisions in the best interest of all involved.

Recommendation:

To ensure this, I recommend all employees be reminded of employee empowerment, and review:

DPS General Order 1.2.10; DPS Mission, Values, and Code of Ethics

VII. Employee Empowerment

A. Guided by Department and subordinate directives, employees are expected to exercise initiative and discretion in the day-to-day performance of their duties. When faced with making decisions, employees should ask themselves:

- 1. Is it ethical and legal?*
- 2. Is it the right thing for the public and the State's citizens?*
- 3. Is it the right thing for the Department of Public Safety?*
- 4. Is it consistent with department directives, or is there good and reasonable cause for going outside of policy?*
- 5. When practical, have those being impacted by the decision been considered and consulted?*
- 6. Is it something for which I am willing to be held accountable?*

B. If the answer is yes to all of these questions, then the employee is empowered to make the decision.

Employees should also be reminded that those who make decisions or take actions contrary to directives must be able to articulate the necessity and soundness of such decisions or actions. And, ultimately, the employee's decisions or actions will be evaluated based upon the criteria of reasonableness rather than the correctness of outcome.